UNITED
NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/1997/97
2 April 1997

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Fifty-third session
Agenda item 21

RIGHTS OF THE CHILD

Question of a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, as well as basic measures needed for their eradication

Report of the working group on its third session

Chairman-Rapporteur: Mr. Iván Mora Godoy (Cuba)

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GE.97-11597 (E)

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Introduction

1. The Commission on Human Rights, in paragraph 28 of its resolution 1996/85, requested its open-ended inter-sessional working group on a draft optional protocol to the Convention on the sale of children, child prostitution and child pornography to meet for a period of two weeks, or less if possible, prior to the fifty-third session of the Commission to pursue its mandate with a view to finalizing the draft optional protocol.

2. The Economic and Social Council, in its resolution 1996/288, authorized the working group to meet for a period of two weeks prior to the fifty-third session of the Commission.

I. ORGANIZATION OF THE SESSION

A. Opening and duration of the session

3. The working group met from 3 to 14 February and on 2 April 1997. The session of the working group was opened by a representative of the High Commissioner for Human Rights, who made a statement. During the session, the working group held nine meetings in plenary, on 3, 4, 7, 13 and 14 February 1997 and on 2 April 1997. Nine meetings were held in an informal drafting group.

B. Election of the Chairman-Rapporteur

4. At its first meeting, on 3 February 1997, The working group re-elected Mr. Iván Mora Godoy (Cuba), Chairman-Rapporteur.

C. Participation

5. The representatives of the following States members of the Commission attended the meetings of the working group, which were open to all members of the Commission: Algeria, Argentina, Austria, Bangladesh, Brazil, Canada, Chile, China, Colombia, Cuba, Czech Republic, Denmark, Egypt, Ethiopia, France, Germany, India, Italy, Japan, Mexico, Netherlands, Nicaragua, Pakistan, Philippines, Republic of Korea, Russian Federation, South Africa, Sri Lanka, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

6. The following States non-members of the Commission were represented by observers: Australia, Bolivia, Belgium, Costa Rica, Cyprus, Estonia, Finland, Hungary, Iran (Islamic Republic of), Morocco, New Zealand, Nigeria, Norway, Peru, Poland, Portugal, Romania, San Marino, Slovakia, Spain, Sweden, Syrian Arab Republic, Thailand and Yemen.

7. The following non-members States of the United Nations were also represented by observers: Holy See and Switzerland.

8. The following United Nations body was represented by observers: United Nations Children's Fund.

9. The following specialized agency was represented by an observer: International Labour Organization.

10. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers at the meetings: American Association of Jurists, Caritas Internationalis, Coalition Against Trafficking in Women, Defence for Children International, International Council of Women, International Federation Terre des Hommes, International Federation of University Women, International Federation of Women Lawyers, International Service for Human Rights and Women's International League for Peace and Freedom (WILPF).

11. The following other non-governmental organization was represented by an observer: NGO Group for the Convention on the Rights of the Child.

D. Documentation

12. The working group had before it the following documents:

E/CN.4/1997/WG.14/1	Provisional agenda
E/CN.4/1997/WG.14/2 and Add.1	Comments on the report of the working group - Note by the Secretary-General
E/CN.4/1996/101	Report of the working group on its second session
E/CN.4/1996/100	Report submitted by Mrs. Ofelia Calcetas-Santos, Special Rapporteur appointed in accordance with Commission on Human Rights resolution 1995/79
A/51/385	Letter dated 19 September 1996 from the Permanent Representative of Sweden to the United Nations addressed to the Secretary-General transmitting the Declaration and Agenda for Action adopted by the World Congress against Commercial Sexual Exploitation of Children (Stockholm, 27-31 August 1996)
A/51/456	Note by the Secretary-General transmitting the interim report of Ms. Ofelia Calcetas-Santos, Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography

II. GENERAL DISCUSSION

A. General debate on the focus and scope of the optional protocol

13. At its 1st, 2nd, 3rd and 4th meetings on 3 and 4 February 1997 the working group, at the invitation of the Chairman-Rapporteur, held a general discussion on the focus and scope of a future optional protocol and the working methods to be followed with regard to its elaboration.

14. All participants agreed on the urgent need for action to address the sexual exploitation of children. In that connection some delegations made

reference to events in 1996, including the holding in Stockholm of the World Congress against Commercial Sexual Exploitation of Children, which had raised political consciousness and drawn public attention to the magnitude of this and related problems. It was stressed that advantage should be taken of this heightened awareness and that an optional protocol dealing with matters relating to the sexual exploitation of children should be drafted as soon as possible.

15. Many delegations stressed that a wide range of legal norms and practical measures existed to combat the sexual exploitation of children, notably those contained in the Convention on the Rights of the Child, programmes of action of the Commission on Human Rights and the Declaration and Agenda for Action adopted by the Congress in Stockholm. In this connection, the importance of strengthening the implementation of existing instruments was urged.

16. While some delegations were of the view that existing standards were generally adequate and that action was required to improve the implementation of the provisions of these standards, in particular those of articles 34 and 35 of the Convention on the Rights of the Child, many others were of the view that existing instruments did not offer an adequate level of protection to children and that an optional protocol was necessary to fill these gaps. However, all delegations were of the view that the optional protocol should complement and strengthen the implementation of the Convention on the Rights of the Child.

17. Most delegations agreed that the future optional protocol should be concise and focus on preventive measures, the criminalization of acts and penalization of offences committed against children as well as the rehabilitation of the child victims. All delegations speaking on this issue emphasized that the child victims of such crimes should not be penalized.

18. Many delegations expressed the view that the optional protocol should also cover the promotion of international cooperation of an administrative and judicial nature. A number of delegations suggested that provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment could be a useful basis for discussions regarding the issue of extradition. It was also suggested that attention should be focused on matters relating to extraterritorial jurisdiction. In addition, the view was expressed that consideration should be given to the provision of minimum standards for the treatment of child victims by law enforcement agencies, the judiciary and the legal system, particularly where children appeared as witnesses in court proceedings.

19. Divergent views were expressed with regard to the scope of the optional protocol. One view was that the sexual exploitation of children should be the focus of the optional protocol which would cover the sale of children for such purposes as well as the problems of child prostitution and child pornography. The other view was that the optional protocol should be broader in scope and encompass not only the previously mentioned issues but also the sale of children in any form or for any purpose, including in the case of illegal adoptions and trafficking in organs. The point was also raised that the

optional protocol should focus on the trafficking of children, especially transborder trafficking. There was general agreement that the issue of sex tourism should be addressed by the optional protocol.

20. In that regard, some delegations emphasized the need and importance of the optional protocol paying particular attention to the issue of child sex tourism which for many countries was a growing concern. Owing to socio-economic problems, the number of street children was increasing as was their vulnerability to such exploitation. Those delegations felt that child sex tourism was an integral part of the mandate of the working group and of child sexual exploitation.

21. Some delegations suggested that the optional protocol should focus attention on the prohibition of the distribution of child pornography through electronic media such as the Internet.

22. Several delegations were of the opinion that the optional protocol should draw attention to poverty and other social and economic problems as root causes of the exploitation of children and thus to the need for greater international cooperation in dealing with these matters. With regard to other preventive measures, the importance of educating and disseminating information to raise the awareness of both children and adults, inter alia to the dangers of child exploitation, was also highlighted.

23. The view was expressed that the optional protocol should provide for the international community to supply financial aid to some countries for the repatriation and reintegration of the children.

24. While some delegations considered that specific definitions were required in order to arrive at uniform legal commitments under the optional protocol, others were of the view that more general definitions would facilitate the speedy conclusion of the drafting of the optional protocol. The latter approach would offer flexibility to the respective national legislative frameworks in drawing up precise definitions of the acts to be penalized. Several delegations also proposed that in the event of no agreement being reached in the working group on the definitions of the phenomena to be addressed under the optional protocol, the task should be attended to by States parties at the national legislative level.

25. It was suggested that during the drafting of the optional protocol account should be taken of the contents of various provisions of the Convention as a means of improving the protection to be offered to children. Specific suggestions as to the precise contents of the definitions of the phenomena affecting children and the acts to be penalized were also put forward for consideration.

26. Those non-governmental organizations which participated in the debate of the working group and which had previously expressed doubts with regard to the necessity and effectiveness of the optional protocol, took the opportunity to assure the working group of their willingness to cooperate in the drafting process. The opinion was expressed that, although priority should be given to urgent implementation and coordination of existing instruments at national and international levels, the optional protocol should serve to bridge some of the

gaps and clarify ambiguities in existing international instruments. Moreover, one of the most important features of the protocol could be to ensure the monitoring of the implementation of the Convention on the Rights of the Child, of all other relevant international instruments and mechanisms, and of the Agenda for Action adopted at Stockholm. Furthermore, the interest of various NGOs in the outcome of the working group was recalled, as was their preference for an optional protocol which should, to the extent possible, fill all the gaps in the Convention on the Rights of the Child and not limit itself only to the question of the sexual exploitation of children.

27. There was all-round agreement to the proposals of the Chairman-Rapporteur as regards the working methods to be followed for proceeding with the drafting of the optional protocol in an informal group.

B. Views expressed by delegations on the draft optional protocol

28. In accordance with a proposal by the Chairman-Rapporteur, at the 1st meeting, the working group held a general debate in plenary meetings, after which it met as an informal drafting group to examine the text of the draft optional protocol and to make concrete drafting proposals. After consideration of the various proposals made on the provisions of the draft optional protocol, the group resumed its plenary meetings to permit delegations to present their views and opinions on the specific provisions as reflected in the annex to the present report. The present section reflects the opinions expressed by some delegations on the text of the articles of the draft protocol.

General

29. The representative of the Russian Federation suggested to combine section A of the present report on the general debate with section B reflecting the views expressed by the delegations.

30. The representative of the United Kingdom stated that the implementation of present instruments, including the Convention on the Rights of the Child, would go a long way towards eradicating the problems of the sale of children, child prostitution and child pornography. However, his delegation viewed the optional protocol positively and believed that it could be an important element in the follow-up to the Stockholm Congress.

31. The representative of France said that, in view of the difficulties encountered by the group in making rapid progress in its work, the minimum objective of the following session should be to reiterate in the draft protocol all the commitments undertaken unanimously by States at the Stockholm Congress.

32. In the view of the delegation of the Netherlands, it was clear that hardly any progress had been made at the present session. The lengthy debate on definitions and its outcome - a text full of square brackets - made clear that the speedy adoption of a protocol would not be feasible if the working group continued to try to define the phenomena in such a way that all States could accept. Legal and penal systems were different. The possibility of overcoming the differences in this respect seemed very small. The

representative added that the manner in which the group worked was not conducive to a speedy conclusion of its task. A clear and more focused working method should be adopted. He furthermore expressed the opinion that the draft report was not completely balanced. In order to save time, however, he would not make further suggestions to amend the draft report, as an extensive rewriting of the report would be necessary to restore the balance. He also emphasized that although children's rights were of major importance, human rights remained universal and indivisible.

33. The representative of Mexico strongly regretted the limited accomplishments of the third session of the working group. Much time had been lost, and important topics such as education had not been discussed at all. Mexico was deeply committed to the integral development of its children, which was why it would continue enthusiastically to support the working group's initiative to prepare an optional draft protocol that vouchsafed protection to the world's children against the offences under discussion. Mexico was convinced that the principle that should govern negotiations among sovereign States was the best interests of the child, and his country was concerned to observe that, on the present occasion, different interests had emerged which were being placed ahead of those interests, in contravention of the Convention on the Rights of the Child, particularly article 3, paragraph 1. He urged all delegations, and especially those that had had the biggest problems during the present session, to find a common solution on behalf of children before the next meeting.

34. The representative of Nicaragua welcomed the changed climate in the working group, where the trench warfare of the previous session had been replaced by a positive atmosphere of cooperation and collaboration, the result of a marked shift in the positions of delegations opposed to the draft protocol. He urged those delegations to maintain that spirit during the fifty-third session of the Commission on Human Rights so as to avoid repeating past mistakes that had led to pointless, unproductive confrontations.

35. The representative of Colombia expressed his satisfaction at the success of the work on the draft protocol, which he considered of vital importance for doing away with practices that harmed the bodies and souls of children. Significant progress had been made during the session. The very fact that there was now a consensus on the need for an international instrument aimed at protecting minors against the sale of children and their exploitation in pornography, prostitution and sex tourism was a great step forward. The fact that definitions of those acts were included in the draft text represented major legal advances, as international legal standards had now been established for preventing special cultural or legal considerations from being invoked against the penalization of practices that were growing as cross-border "industries". The productive debates on much of the text had helped its substantive aspects to evolve, thereby contributing to the effectiveness of the instrument that would eventually result. His delegation was particularly concerned because, in some instances, in the interests of safeguarding such substantive rights as freedom of the press and of information, other rights of equal importance for humanity, such as the rights of the child, were being subordinated or disregarded. In conformity with the principles of the indivisibility, interdependence and universality of human

rights, the working group should strive for balanced treatment so that the protection of children was not diminished in favour of interests that placed commercial concerns above the human being.

36. The representative of Cuba said that the current session of the working group had been marked by a positive atmosphere. The change in political will, primarily among countries that had previously opposed the drafting exercise, represented an international response to a phenomenon which had been plainly in evidence in 1996. Work had proceeded productively and the results were apparent in the annex. The Chairman's methods had been effective. If they were combined with a real willingness to negotiate, one which isolated the superfluous interests that made the protection of the child dependent upon certain criteria, it might actually be possible to continue working at the next session so that the draft could be completed without further delay, without excluding the sale of children (art. 35 of the Convention), and specifying the phenomena of child prostitution, child pornography and sex tourism.

36. bis The observer for UNICEF stated that UNICEF supported the process of drafting an optional protocol on the sale of children, child prostitution and child pornography. It maintained, however, the importance of implementing existing international and national standards, such as the Convention on the Rights of the Child and the United Nations Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography adopted by the Commission on Human Rights in 1992. UNICEF wished to highlight a few points: it was not poverty alone but poverty together with other factors which led to the sexual exploitation of children; girls were clearly the vast majority of the victims; education and rehabilitation of the child victims were of crucial importance. UNICEF also suggested that in keeping with the Convention on the Rights of the Child, the United Nations Programme of Action and the Declaration and Agenda for Action adopted in Stockholm, the working group should be guided by the principle of the best interest of the child, which implied that the opinions of children will be considered and the participation of children included in all actions aimed at combating the sale of children, child prostitution and child pornography.

37. The representative of the United Kingdom indicated that many aspects of the sale of children, child prostitution, child pornography and child sex tourism dealt with in the chapter on definitions were already criminal acts under the law applicable in the United Kingdom. He further stated that it was the understanding of his delegation that States parties would not be required to legislate afresh in order to reproduce the exact words of the definitions contained in any future Protocol.

38. The representative of Cuba said that, given the current spirit of cooperation prevailing in the working group, articles 34 and 35 of the Convention must be the basis for the provisions if prompt, effective results were to be reached. States which were signatories to, or had ratified, the Convention had not expressed any reservations with regard to articles 34 and 35, which must be taken into account for the instrument to be sufficiently functional, effective and viable.

39. The importance of ensuring the consistency between the texts of the draft optional protocol in English, French and Spanish was emphasized. In this regard, it was noted, inter alia, that the Spanish text referred to "the use of children in prostitution" while the English text read "child prostitution/use of children in prostitution". It was suggested that the working group should address this matter on an urgent basis at its next session.

40. The observer for the International Labour Organization recalled that, in March 1996, the Governing Body of the ILO took the decision to include in the agenda of the eighty-sixth session (1998) of the International Labour Conference the question of child exploitation, with a view to adopting new international labour standards aiming at the promotion of measures to put an end immediately to the intolerable exploitation of children in a number of situations, including the use, engagement or offering of a child for prostitution, production of pornography or pornographic performances.

41. The observer for the International Federation of Women Lawyers suggested that the working group should include in its mandate, in addition to the issues of sale of children, child prostitution and child pornography, the issue of abduction which was a most common practice. In that regard, she recalled the recent tragic events in Belgium which would not be covered by the optional protocol if it were only limited to its mandate.

Chapter II: Definitions

42. The representative of the United States noted that the sale of children, child pornography, child prostitution and sex tourism were already prohibited under the laws of the United States. There were many different definitions of most of those offences under the criminal laws of the 50 states or of the Federal Government. If a new treaty were to be adopted which would require states to change their definitions, then the definitions should be legally precise. He expressed the view that the current definitions were inadequate and concern regarding the risk of divergent interpretations. He also expressed concern that the negotiations were not narrowing differences and stressed the need to focus on the areas where there was a consensus in order to conclude work on the protocol rapidly.

43. The representative of China expressed her delegation's regret that the definition of the sale of children did not include a direct reference to the problem of the trafficking of children.

44. With regard to the question of the definition of the sale of children, the delegations of Colombia, Costa Rica, Egypt, Ethiopia, Nicaragua, Nigeria, Peru and Uruguay also indicated their preference for wording that was broad and general and thus supported the proposal for the deletion of square brackets around the words "for any purpose or in any form" in the text of the definition in chapter II. The observer for Peru said that the definition of the sale of children should cover the problem of illegal adoption.

45. The representative of Cuba also expressed the view that the definition of the sale of children should be as comprehensive as possible and indicated her preference for the wording "for the purpose of sexual, economic or

criminal exploitation, including the illegal adoption, trading in and transplantation of organs for any form of compensation" in the text of the definition in chapter II. The representative cautioned that the preference for the speedy adoption of a protocol should not be used as an excuse for limiting its scope.

46. The observer for Nigeria expressed the opinion that a definition of the terms was necessary. Any definition of the sale of children should strike a balance between the market forces of supply and demand. However, his delegation would prefer to delete the section on definitions if that would save the negotiations.

47. The representative of Germany proposed that the definition of the sale of children should focus on the sale of children for the purpose of sexual exploitation; otherwise, it would be difficult to elaborate an instrument sufficiently operational and effective to address the problems which were at the heart of the working group's mandate. This position was shared by the delegations of Australia, Canada, Finland, France, Japan, the Netherlands, the Republic of Korea and the United States.

48. With regard to the sale of children, the representative of Italy expressed full agreement with the need for the optional protocol to focus on criminal acts relating to the sexual exploitation of children so as to avoid losing both focus and impact. At the same time, it seemed necessary to take into account the wording of article 35 of the Convention on the Rights of the Child. This objective problem should be further addressed at the next session of the working group and possible ways of reaching a consensus explored. This position was shared by the delegations of Finland, France, Mexico, Spain, Sweden and Switzerland.

49. The observer for Uruguay expressed her preference for the use of the word "negotiation" as it encompassed a wide range of situations including the traffic in children and would allow better protection of the child.

50. The representative of Colombia stated his preference for the use of the word "transfer" over "transaction" and "negotiation" as the connotation of the latter words was overtly commercial and thus inappropriate in describing situations affecting children.

51. With regard to the definition relating to child prostitution, the representative of Egypt expressed her delegation's preference for the deletion of the word "unlawful". By way of explanation, she stated that all sexual activities per se in the context of child prostitution were unlawful. Therefore, the issue of the age of consent was not relevant to the definition. This position was supported by the delegations of Canada, China, Cuba, Ethiopia, Italy, Mexico, Nigeria, Philippines and the Syrian Arab Republic.

52. The representative of Uruguay proposed the deletion of the square brackets around the words "even with the consent of the child" in the definition of child prostitution. This view was supported by the delegations of Brazil, Cuba, Egypt, Ethiopia and Nicaragua.

53. The representative of Ethiopia stated that retaining the words "even with the consent of the child" was consistent with the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

54. With regard to the same question, the delegations of Canada and Peru proposed the deletion of the words "even with the consent of the child", stating that it was superfluous as a child could not, in any circumstance, consent to prostitution. They were supported by the observer for Switzerland.

55. The representative of Uruguay said the concept of the age of consent which existed in some national legislations should not be confused with the concept of the age of majority.

56. The representative of Mexico emphasized that the issues surrounding the question of the consent of the child should be fully discussed at the next session of the working group.

Chapter IV: Penalization and protection of children/child victims

57. With respect to chapter IV of the draft optional protocol relating to penalization and protection of children/child victims, the representative of the Netherlands stressed the importance of maintaining the text of chapter IV (1) (d), namely "the use of children in sex tourism", in square brackets. She further stated her delegation's preference for the incorporation of the concept of child sex tourism in the definition of child prostitution. The representative explained that the definition of child sex tourism as presently worded was too broad and too vague and thus presented difficulties as regards its application at the national legislative level, particularly in her country which provided for the direct application of international standards. However, she expressed her delegation's willingness to consider alternatives that took into account her country's legal concerns.

58. It was decided that the text of chapter IV (1) (d) would be retained in square brackets.

59. The representative of the United States pointed out the important connection between the text of the second paragraph of chapter IV and the issue of child sex tourism. Including the concept of sex tourism in the protocol would not be meaningful unless States applied their domestic criminal laws in an extraterritorial manner to control the activities of their nationals in foreign countries.

60. The observers for Nigeria and the Islamic Republic of Iran insisted that paragraph 3 should be retained in the section on penalization. The observer for Nigeria explained that this paragraph should be reconsidered within the context of future discussions on definitions.

61. The observer for Nigeria expressed his delegation's preference for the title of chapter IV to read "Penalization and the protection of child victims". In this connection, he emphasized that issues relating to the

protection of children were already covered by the Convention on the Rights of the Child and the protocol should be complementary to the Convention by providing specific protection to child victims.

62. With regard to the second part of paragraph 4 dealing with extradition, the representative of Egypt stated that it was her delegation's understanding of that paragraph that it constituted an option but not an obligation for action by States parties.

63. The representative of the United Kingdom explained that the paragraphs on extraterritorial jurisdiction went much further than existing United Kingdom legislation on this matter and more than was appropriate. However, he indicated that as the text of those paragraphs had received general support within the working group, his delegation would not stand in the way of progress in the drafting of the optional protocol.

64. The observer for Peru expressed the view that the words "its nationals" should be deleted from paragraph 5, as the obligations provided for under this paragraph should cover non-nationals. This view was supported by the delegations of Canada, Cuba and Switzerland.

65. The representative of Egypt explained that under the Egyptian Constitution the extradition of nationals was prohibited. Therefore, she expressed a preference for retaining the words "its nationals" within the text of paragraph 5.

66. The representative of the United Kingdom explained that certain aspects of paragraph 5, in relation to extradition, went further than his delegation would have wished, but in the spirit of compromise his delegation would not stand in the way of progress in the drafting of the optional protocol.

67. The representative of China expressed the view that "the double criminality rule" mentioned in paragraph 5 in the section on extradition was a general rule relating to bilateral extradition practices and treaties. However, it was irrelevant to this optional protocol, since common standards on offences had been included in the protocol. Therefore, she suggested the deletion of the phrase "taking into account the double criminality rule". The representative of China felt that this suggestion was supported by many delegations.

68. The representative of Canada expressed a preference for the deletion of the word "judicial" from the title and paragraphs relating to "Mutual judicial assistance". She explained that the deletion of those words were required in order to ensure that the text of those paragraphs were compatible with common-law legal systems. The representative of the United States agreed to the deletion of the word "judicial" in the subtitle but not from the text of the relevant paragraphs. The reason was that other words would have to be added, and this should be done in the drafting group. The Chairman-Rapporteur decided that the issue should be addressed at the next session of the working group.

69. The observer for Belgium emphasized the importance of strengthening the legal position of the child victim in the judicial proceedings. If the

criminalization of the sexual exploitation of children was considered, due attention should be given to this; paragraph 2 of the section relating to the protection of children was reviewed in this respect. Paragraphs (d), (e) and (f), however, had to be discussed at the next session of the working group and were therefore in square brackets.

70. The representative of the Republic of Korea expressed concern over the inclusion of the words "liable to punishment" in article 2 bis. By way of explanation he stated that in the legislation of his country only children under the age of 14 were not penalized for the crime of prostitution.

71. The delegations of Uruguay and Ethiopia emphasized that child victims should not be punished or held criminally responsible.

72. The observer for Peru expressed his concern over the use of the word "victim" in connection with the concept of punishment or any other penalty.

73. The decision was taken to transfer paragraph 2 bis included in the section relating to the protection of children to the section addressing the issue of penalization. Paragraph 2 bis read as follows:

> "[States parties shall ensure that [children who are victims of] [children used in] the sale of children, child prostitution and child pornography are not further victimized] [liable to punishment] [for such offences]."

74. Many delegations expressed the view that paragraph 3 should be deleted as a result of the negotiations undertaken by Canada on paragraph 2 of the section dealing with the protection of children/child victims. In the view of the representative of Nicaragua paragraph 3 should be included and read as follows:

> "States Parties shall adopt all [necessary] [appropriate] measures to protect [,without prejudice to the rights of the accused,] the right to privacy of victims of sale of children, child prostitution and child pornography, [in particular by ensuring the confidentiality of files] [in particular by ensuring the non-dissemination] [in particular prohibiting the dissemination] [in particular by avoiding the dissemination] of information that could lead to the identification of such child victims."

Chapter V: International cooperation and coordination

75. The observer for Switzerland stressed the importance of cooperation between national authorities and non-governmental organizations in identifying and prosecuting persons committing acts prohibited by the protocol.

76. The representative of Uruguay supported by the observer for Costa Rica, stressed the importance of preventive measures and international cooperation in eradicating basic problems such as socio-economic ones, which made children more vulnerable to such practices.

77. The observer for Nigeria proposed the deletion of the square brackets around the word "assistance" in article G. This proposal was accepted by the working group.

78. The representative of Mexico proposed the insertion of the word "especially" between the words "children" and "from" in article H. This was agreed to by the working group.

Chapter VIII: Other matters

79. With regard to the structure of the future optional protocol, the observer for the Islamic Republic of Iran stated that several independent paragraphs addressing different issues had so far been proposed by the participants and were clustered under chapter VIII entitled "Other matters". In order to have an appropriate title so that chapter VIII would be commensurate with the other chapters and to create further interlinkage between its paragraphs which, in the view of his delegation, dealt with general principles, he proposed that chapter VIII, "Other matters", be replaced by a chapter entitled "General provisions" to be regarded as chapter I at the beginning of the draft protocol currently under consideration. The issue of definitions should also appear under chapter I as proposed above.

Annex

DRAFT OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Part 1. Texts resulting from the debates held by the working group at its third session

The following texts reflect the outcome of the discussions in the working group at its third session.

CHAPTER II. DEFINITIONS 1/

Sale of children

Sale of children means any kind of [transfer] [transaction] [buying or selling] of a child between any person [natural or legal person] [having custody or control over the child] and any other person [natural or legal person] for any form of compensation or benefit [for them or a third party] [with a view to the exploitation of the child] [for the purpose of coercing or inducing the child into child prostitution or child pornography] [for the purpose of sexual, economic or criminal exploitation, including the illegal adoption, trading in and transplantation of organs for any form of compensation] [for any purpose or in any form].

Child prostitution

Child prostitution/the use of children in prostitution means the act of obtaining, procuring [or offering] [or facilitating] the services of a child to perform [unlawful] sexual acts, inducing a child to do so, or any other deliberate act intended for this purpose [even with the consent of the child] for any form of benefit.

Child pornography

Child pornography/the use of children in pornography means the representation [in any form] of a child engaged in explicit sexual activity or [of a sexual organ or the anal region of a child] [of the body of a child] the dominant characteristic of which is the depiction for a sexual purpose, [and includes the making, printing, publishing, importing, exporting, distributing, selling [advertising] [broadcasting] and possessing of such materials] [and includes the trading, publishing, dissemination and possession of such materials].

Child sex tourism

Child sex tourism means tourism organized with the intention to facilitate or effect [directly of indirectly] [the sale of children,] [child pornography], child prostitution or [any other unlawful sexual practices]. The Netherlands proposal on definitions reads as follows:

1/ If no agreement were to be reached on the proposed definitions, there is the Netherlands proposal, included in the annex as article 1.

[Article 1

1. For the purposes of this Protocol, States Parties shall define, in their legislation, sale of children, child prostitution, child pornography and [child sex tourism], in accordance with the objectives [of articles 34 and 35] of the Convention on the Rights of the Child and the present Protocol.

2. States Parties may in their definitions derogate from the majority age otherwise contained in their legislation.]

CHAPTER IV. PENALIZATION OF OFFENDERS AND PROTECTION OF [CHILDREN] [CHILD VICTIMS]

Penalization and prosecution

1. Each State Party shall ensure that the following activities, as defined in (chapter II or article ...) are offences under its criminal law and shall make these offences punishable by appropriate penalties which take into account their grave nature:

(a) Sale of children;

(b) [Exploitative] use of children in prostitution;

(c) [Exploitative] use of children in pornography [making, printing, importing, exporting, distributing, selling, [advertising], [broadcasting] and possession of child pornography] [or trading, publishing, dissemination and possession of such materials];

[(d) Use of children in sex tourism.]

[1 bis A corporation or any other legal person can be prosecuted consistent with the legal system of a State.]

Moved from section dealing with protection of children/child victims:

[States parties shall ensure that [children who are victims of] [children used in] sale of children, child prostitution and child pornography are not [liable to punishment] under/for such offences.]

2. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate (article 5.1 of the Convention against Torture).
To be reconsidered during future negotiations on definitions:

[3. States Parties shall undertake measures and adopt such legislation as necessary aimed at prohibiting the production of, access to and dissemination of material containing, promoting and encouraging the sale of children, child prostitution and child pornography [through various means including electronic media and modern telecommunication facilities].]

Extradition

4. The offences referred to in article ... shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties, and shall be included as extraditable in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in these treaties.

If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Protocol as a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 2 (article 8 of the Convention against Torture).

5. If an extradition request is made with respect to an offence described in the first chapter and if the requested State does not or will not extradite [its nationals] the requested State [of the national] shall take suitable measures to submit the case to its authorities with a view to determining whether sufficient grounds exist to prosecute [taking into account the double criminality rule].

Mutual judicial assistance

[States Parties shall afford one another the greatest measure of assistance in connection with [criminal] proceedings brought in respect of any of the offences referred to in article ..., including the supply of all evidence at their disposal necessary for the proceedings.

States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them (article 9 paragraphs 1 and 2 of the Convention against Torture).

Seizure and confiscation

6. States Parties shall take all necessary and appropriate measures [for investigation and prosecution] to allow the seizure and confiscation [from persons convicted] [from the offenders] of the gains from the offences described in article ... [specifically funds, property, equipment and other assets used by those persons to commit or promote the commission of those offences] consistent with due process and other applicable laws.

Protection of [children] [child victims]

2. States Parties shall adopt all appropriate measures to protect the interests of child victims of the sale of children, child prostitution, child pornography and child sex tourism throughout the criminal proceedings, in particular by:

(a) 2/ Protecting the right to privacy of these victims, in particular by ensuring the [non-] [availability of measures to avoid] dissemination of information that could lead to the identification of such child victims;

(b) Facilitating the testimony of these victims through appropriate measures [and ensuring that these victims are not further victimized by these proceedings];

(c) Ensuring that the views or concerns of these victims shall be brought to the attention of the court, where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

[(d) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(e) Providing proper assistance to child victims throughout the legal process;

(f) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.]

4. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations including investigations aimed at establishing the age of the victim.

6. States Parties shall adopt measures in order to protect the safety and integrity of those persons and/or institutions involved in the prevention and/or protection and rehabilitation of child victims of these practices.

2/ See paragraph 73 of the report.

CHAPTER V. INTERNATIONAL COOPERATION AND COORDINATION

Article A

States Parties shall take all necessary steps to strengthen international cooperation by all appropriate means, including bilateral, multilateral and regional arrangements for the prevention, detection, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.

Article C

States Parties shall promote cooperation between their authorities and [relevant] [national and international non-governmental organizations] and international organizations with a view to the implementation of the purposes of the present Protocol.

[Article E

States Parties shall, through bilateral and multilateral cooperation, undertake to take such measures as are deemed effective [in eliminating the consumer market that nurtures] [in order to fight][the increase in] the sale of children, child prostitution, child pornography [and child sex tourism] [on the basis of the principle of collective responsibility].]

Article F

[States Parties shall ensure the strengthening of international cooperation in order to eliminate the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the practices of sale, prostitution, pornography and child sex tourism]

Article G

States Parties shall ensure the implementation and strengthening of measures against the practices referred to in the present Protocol, including the protection against cross-border trafficking, and providing special arrangements for the assistance, repatriation and reintegration of child victims, when appropriate.

[Article H

States Parties shall ensure international cooperation to assist children especially from developing countries for their repatriation and reintegration, in particular by providing financial aid.]

Part 2. Texts left from its previous session for consideration by the working group at its next session

CHAPTER VI. ASSISTANCE, REHABILITATION AND COMPENSATION

[1. States Parties shall adopt all feasible measures to ensure adequate assistance, including medical, economic, social and legal assistance to victims of sale of children, child prostitution and child pornography, with the aim of attaining their full physical and psychological recovery and social reintegration.]

[2. States Parties shall adopt social development policies as well as other relevant policies and implement programmes, focused on children and vulnerable groups [to promote an adequate standard of living for the physical, mental, spiritual, moral and social development of the child] that would contribute to preventing the sale of children, child prostitution and child pornography.]

OR

[2. States Parties shall adopt special measures in order to protect children specially vulnerable to sale of children, child prostitution and child pornography.]

3. States Parties shall ensure that child victims of sale, prostitution and pornography have access to adequate procedures to seek compensation [from the offender] for [damage and other] negative consequences of these offences.

OR

3. States Parties shall provide in their legislation child victims of sale, prostitution and pornography with the right to seek compensation for the negative consequences of these offences.

PREAMBLE (FORMER CHAPTER III. IMPLEMENTATION OF PERTINENT INSTRUMENTS)

Proposal submitted by the delegation of the United States of America acting as coordinator

Emphasizing the importance of preventing and eradicating the sale of children, child pornography and child prostitution through effective national legislation and domestic measures, including measures aimed at minimizing access to and dissemination of materials promoting the sale of children, child pornography and child prostitution, through written, visual, or modern telecommunication and electronic media,

Stressing the continuing need for effective implementation by States of relevant international legal instruments relating to the sale of children, child prostitution and child pornography, including the Convention on the Rights of the Child and all other relevant treaties and conventions to which they are party,

Giving due regard to the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the other relevant decisions and recommendations of pertinent international bodies,

Encouraging appropriate activities of, and cooperation with, relevant international and non-governmental organizations, with respect to the sale of children, child pornography and child prostitution, in line with their respective national legislation,

Recalling that in the Convention on the Rights of the Child, States Parties undertook to protect the child from all forms of sexual exploitation and sexual abuse,

Bearing in mind that the majority of the child victims in the sale of children, child prostitution and child pornography are from developing countries,

Believing that the elimination of the consumer market will effectively reduce the sale of children, child prostitution and child pornography,

Recognizing that while poverty or underdevelopment create an environment which may lead to child exploitation, the sale of children, child prostitution and child pornography cannot under any circumstances be justified by reason of such poverty or underdevelopment,

Recognizing the need to address the root causes contributing to the vulnerability of the child to sale of children, child prostitution and child pornography, including poverty and underdevelopment,

Deeply concerned at the widespread and continuing practice of sex tourism to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing the trans-border nature of prevailing practices that promote the commercial sexual exploitation of children,

Emphasizing in this regard the importance of establishing effective international cooperation, including bilateral, multilateral and regional arrangements, providing for penalization, prevention, detection, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution and child pornography,

Emphasizing that nothing in this Protocol prejudices the legitimate adoption of children consistent with the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally,

Recognizing that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Proposal submitted by Denmark

Keeping in mind that any person regarding whom proceedings are brought in connection with any of the offences referred to above should be guaranteed fair treatment at all stages of the proceedings (art. 7, para. 3 of the Convention against Torture).

Proposal submitted by the delegation of Australia acting as a coordinator for Chapter V

Encouraging States Parties to work to ensure cooperation between their appropriate officials in tracing and apprehending and prosecuting those responsible for acts involving the sale of children, child prostitution and child pornography, and in investigating such acts, and to work with relevant non-governmental and international organizations to assist with the identification of offenders, bearing in mind the need to protect the privacy of all involved,

Encouraging States Parties also to take all reasonable steps to put in place effective bilateral, multilateral or regional arrangements for cooperation in the prevention, detection, prosecution and punishment of acts of tourism organized with the purpose of facilitating the effecting of a commercial sexual relationship with a child,

Considering that States Parties should strengthen cooperation in providing assistance, rehabilitation and repatriation where this is appropriate to child victims of sale, prostitution and pornography,

Considering also that States Parties should take all feasible measures, through bilateral and multilateral cooperation and on the basis of collective responsibility, to eliminate the sale of children, child prostitution and child pornography,

Encouraging States Parties to promote and strengthen international cooperation in the elimination of poverty, hunger and underdevelopment, all of which create an environment which may lead to the exploitation of children, particularly in developing countries, with a view to contributing to the elimination of sale of children, child prostitution and child pornography.

CHAPTER VII. INFORMATION, EDUCATION AND PARTICIPATION

Proposal submitted by the delegation of the Russian Federation acting as coordinator

States Parties in accordance with international norms for the protection of children promote education, information and public awareness of the effects of the sale of children, child pornography and child prostitution. For these purposes States Parties strengthening measures at international and national levels shall, inter alia:

(a) Launch campaigns, actively involving the media and other participants to sensitize and inform people to the gravity and dangers that flow from the sale of children, child pornography and child prostitution (and avoiding the dissemination of programmes that may be conducive to the encouragement of such exploitation). These campaigns address all those persons who are responsible for taking care of children; parents, educators and all others, such as associations, tourist agencies and tourists, as well as the public. They focus on the dissemination of information on the rights of the child, the condemnation of and the fight against all forms of exploitation of children;

(b) Encourage the inclusion in educational efforts of information on the risks that children may run in regard to the sale of children, pornography, and child prostitution and on how they can defend themselves, taking into account in particular the right of the family to its integrity, the fundamental right of every child to the integrity of his own body and the protection of his identity and his rights as laid down in the Convention;

(c) Promote other programmes aimed at heightening public awareness, and improving the training of those who have functions involving support for and protection of children in the fields of education, health, social welfare and the justice system, in order to enable them to identify the phenomena of the sale of children, child pornography and child prostitution;

(d) Inform the public of relevant measures adopted and the number of prosecutions and sentences imposed in cases involving the sale of children, child pornography and child prostitution. The outcome of the proceedings instituted should be made public, while ensuring the anonymity of the victims, as well as the respect of their rights, in particular their right to privacy;

(e) To make use of the means to ensure respect for social, spiritual and moral values;

(f) Promote greater involvement of the general public in disseminating the notion of protection of the child as an ethical principle common to all cultures and in the implementation of programmes established for such purposes.

Proposal submitted by the delegation of Canada

States Parties shall promote public awareness of the effects of the sale of children, child pornography and child prostitution.

Proposal submitted by the delegation of the Russian Federation

States Parties through education, information and participation of the public at large including children (shall) promote awareness (of the society) of the (harmful) effects of the sale of children, child pornography and child prostitution.

OR

States Parties agree to take or to encourage through their public and private educational health, social and other related services, mass media measures or the promotion of awareness of the harmful effects of the sale of children, child pornography and child prostitution.

OR

States Parties undertake to arrange for appropriate publicity warning the public of the harmful effects of the sale of children, child pornography and child prostitution.

Proposal submitted by the delegation of the Islamic Republic of Iran

Article A

States Parties shall promote awareness at all levels of the grave problems of sale of children, child prostitution and child pornography and to ensure respect for social, spiritual and moral values through education and information at the national and international levels.

Article B

States Parties shall endeavour to involve the media as an active partner to sensitize and inform people of the gravity and dangers that flow from the sale of children, child prostitution and child pornography and agree to take or to encourage mass media measures to prevent dissemination of programmes that may be conductive to the encouragement of such exploitation.

CHAPTER VIII. OTHER MATTERS

Proposal submitted by the Islamic Republic of Iran on the structure of the protocol

The following issues would be placed under chapter I entitled "General provisions":

A. Definitions

As adopted by the working group

B. An independent article

Nothing in this Protocol shall be interpreted in a manner to affect the right of each State to take any appropriate measures aimed at combating sale of children, child prostitution and child pornography.

C. Non-discrimination (as contained in document E/CN.4/1995/95, annex I)

The provisions of a possible optional protocol should be implemented without discrimination of any kind as set forth in article 2 of the Convention on the Rights of the Child.

D. Reservations (as contained in document E/CN.4/1995/95, annex I)

A possible optional protocol should consider the question of reservations.

E. Reporting (as contained in document E/CN.4/1995/95, annex I)

A possible optional protocol should contain a provision relating to the inclusion of information regarding the implementation of the protocol in the regular reports submitted by States who are party to the Optional Protocol to the Committee on the Rights of the Child, pursuant to article 44 of the Convention on the Rights of the Child.